

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

PLAINTIFF

RAYMOND PERRY

VS.

**3M COMPANY AND ARIZANT
HEALTHCARE, INC.**

**MASTER SHORT FORM
COMPLAINT AND JURY TRIAL
DEMAND**

1. Plaintiff, Raymond Perry, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff is filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Raymond Perry, is a resident and citizen of the State of Louisiana and claims damages as set forth below.

3. Jurisdiction is proper based upon diversity of Citizenship.

4. Proper Venue: The District Court in which remand trial is proper and where this Complaint would have been filed absent the direct filing order by this Court is the District of Minnesota.

5. Plaintiff brings this action on behalf of himself.

FACTUAL ALLEGATIONS

6. On or about June 8, 2021, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of his left total knee arthroplasty (“TKA”) at Abbeville General Hospital, in Abbeville, Louisiana, by Dr. Seth Rosenzweig.

7. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”). The Pathogen was not identified.

8. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff underwent corrective surgery on August 8, 2021, where the implant was removed, cleaned, and immediately reinserted during the corrective surgery at Abbeville General Hospital in Abbeville, Louisiana.

ALLEGATIONS AS TO INJURIES

9. (a) Plaintiff claims damages as a result of:

- | | |
|---------------------|----------------------------------|
| <u> X </u> | INJURY TO HERSELF/HIMSELF |
| _____ | INJURY TO THE PERSON REPRESENTED |
| _____ | WRONGFUL DEATH |
| _____ | SURVIVORSHIP ACTION |
| <u> X </u> | ECONOMIC LOSS |

(b) Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff.

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

10. The following claims and allegations are asserted by Plaintiff and are herein adopted by reference:

- X FIRST CAUSE OF ACTION - NEGLIGENCE;
- X SECOND CAUSE OF ACTION - STRICT LIABILITY;
- X FAILURE TO WARN
- X DEFECTIVE DESIGN AND MANUFACTURE
- X THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;
- X FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF LOUISIANA, LA. C.C. ART. § 2520, et seq.;
- X FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;
- X SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;
- X SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;
- X EIGHTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA FALSE ADVERTISING ACT;

- X NINTH CAUSE OF ACTION- CONSUMER FRAUD
AND/OR UNFAIR AND DECEPTIVE TRADE
PRACTICES UNDER LAW OF THE STATE OF
LOUISIANA, LA. R.S. § 51:1401, et seq.;
- X TENTH CAUSE OF ACTION – NEGLIGENT
MISREPRESENTATION;
- X ELEVENTH CAUSE OF ACTION- FRAUDULENT
MISREPRESENTATION;
- X TWELFTH CAUSE OF ACTION – FRAUDULENT
CONCEALMENT;
- THIRTEENTH CAUSE OF ACTION – LOSS OF
CONSORTIUM; and
- X FOURTEENTH CAUSE OF ACTION – UNJUST
ENRICHMENT.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and

8. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all claims in Complaint so triable.

Dated: February 21, 2023

Respectfully submitted,

HODGES & FOTY, LLP

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